

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS**

November 15, 2006

In re Application of: Richards, et al.
Serial No. 10/021,375
Filed: October 30, 2001
For: Method For Retrieving Shipping Platforms
Examiner: Van Doren, Beth
Art Unit: 3623
Confirmation No. 2529
Attorney Docket No. ONW-1

APPEAL BRIEF

HONORABLE COMMISSIONER OF
PATENTS AND TRADEMARKS
Alexandria, VA 22313-1450

Sir:

This application is before the Honorable Board of Appeals on appeal from the final rejection by the Examiner dated June 23, 2006, wherein claims 1 to 18 were finally rejected.

(B)

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(C)

Real Party in Interest

The real party in interest is the Ongweowch, Corp. as evidenced by the Assignment dated October 30, 2001.

(D)

Related Appeals and Interferences

There are no related appeals or interferences.

(E)

STATUS OF CLAIMS

Claims 1 to 18 are pending in the application, and the rejection of Claims 1 to 18 is being appealed.

The Claims are set forth in the Appendix to this brief.

(F)

STATUS OF AMENDMENTS

All amendments presented in Applicant's Response to the Office Action dated April 20, 2006 have been entered.

(G)

SUMMARY OF CLAIMED SUBJECT MATTER

The appealed subject matter is a method for identifying, retrieving, and returning shipping platforms from downstream recipients through the use of an identification stenciling program and a website or other computer network connection that is managed by a coordinator. The process starts by a shipper contacting the coordinator to retrieve shipping platforms prior to shipping its products on shipping platforms (page 4, lines 20-21 of the specification, as filed). The coordinator assigns a specific number or other identifier which corresponds to each type of platform used by the shipper (page 4, lines 22-26; Claims 1-a and 12-b).

The coordinator creates a separate page within its web site for each shipper entered into the program (Claim 1-b). This page includes shipping platform numbers and other information identifying the shipper (Claims 1-a and 12-a), including the construction, and repair standards of each specific shipping platform (page 5, lines 1-2; Claim 7). The coordinator sends the shipper a stencil design that is specific to that shipper which the shipper uses to mark each one of his shipping platforms (page 5, lines 3-5; Claims 2 and 12-b). The shipper then ships his product using the shipping platform to the buyer or direct recipient (page 5, lines 7-13).

Once the direct recipient is finished with the shipping platforms, these platforms may then be transferred or sold to an end recipient, such as a recycler (Claims 12-18), a scrap dealer or they might remain with the direct recipient (page 5, lines 14-20). The end recipient or direct recipient of the shipping platforms registers the type, quantity, and permanent number found on the shipping platforms at the coordinator's web site (page 5, lines 21-24; Claims 11 and 18). The shipping platforms are inspected by the recipient based upon the repair specifications (if applicable) for the particular type of shipping platforms, based on the information on the web page for the specific platform used by a particular shipper (page 5, lines 25-26; Claims 8 and 15). Repairs are performed, if necessary (Claim 8).

The shipper is made aware of their original shipping platforms via the coordinator's website. The coordinator's website reconnects a specific shipper with its own shipping platforms and is used to broker both the transfer of the shipping platforms from the recipients back to the original shipper and facilitate the transfer of money resulting from the sale of the platforms back to the original shipper (page 6, lines 4-13; Claims 4 and 14).

(H)

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether Claims 1-4, 7-13 and 15-18 are patentable under 35 U.S.C. §103(a) over TradeOut.com in view of CHEP.com.
2. Whether Claims 12-13 and 17-18 are patentable under 35 U.S.C. §103(a) over CHEP.com in view of TradeOut.com.
3. Whether Claims 7-9 are patentable under 35 U.S.C. §103(a) over TradeOut.com in view of CHEP.com and further in view of Canadian Patent Council (CPC).
4. Whether Claims 15-16 are patentable under 35 U.S.C. §103(a) over CHEP.com in view of TradeOut.com and in further view of CPC.
5. Whether Claims 5-6 and 14 are patentable under 35 U.S.C. §103(a) over TradeOut.com in view of CHEP.com and in further view of SJF Material Handling, Inc. (sjf.com).
6. Whether Claim 14 is patentable under 35 U.S.C. §103(a) over CHEP.com in view of TradeOut.com and in further view of SJF Material Handling, Inc. (sjf.com).

(I)
ARGUMENT

Issue 1

Rejection under 35 U.S.C. 103(a) over Tradeout.com in view of CHEP.com

Claims 1-4, 7-11

Tradeout.com is an internet auction site where any buyer can purchase items listed on the site by a seller of a variety of goods. This system is similar to the internet website eBay.com. Tradeout.com does not reconnect a specific product, such as a shipping platform, with the original shipper of that product.

CHEP.com consists of a group of member companies who ship and retrieve containers within a closed loop business environment. CHEP retains ownership of their shipping platforms throughout the entire process of transfer from the original shipper to the end recipient and back to the original shipper again. They mark their platforms as being the property of CHEP. This is in contrast to Appellants' method, which focuses on reconnecting lost shipping platforms with their original shipper through the method of the present invention. Neither CHEP nor Tradeout.com disclose a system for identifying platforms from a plurality of unconnected original shippers. They simply identify and track platforms within the environment of their own closed loop network. The combination of CHEP and Tradeout would result in a tightly controlled, closed loop, environment for the tracking of platforms owned and controlled by the network manager(s).

In contrast, Claim 1 defines a method whereby a plurality of independent original shippers can re-purchase their own shipping platforms through a website established and managed by a third party, the coordinator. The coordinator assigns identifications to each platform type (Claim 1-a), associates the types of platforms with the original shipper in an internet accessible file (Claim 1-b) and contacts the appropriate original shipper when *its own original* platforms have been listed on the coordinator's website (Claim 1-c).

Issue 1

Rejection under 35 U.S.C. 103(a) over Tradeout.com in view of CHEP.com

Claims 12-13 and 15-18

The discussion of the references and arguments set forth above with respect to the rejection of claims 1-4 and 7-11 are herein incorporated by reference.

Claim 12 sets forth a method whereby shipping platforms that otherwise would have been scrapped may be recycled or reused by the original shipper of those platforms. It provides that the original shipper may be advised that its original shipping platforms are available for repurchase. The original shipper is more inclined to repurchase its original shipping platforms than would another party once certain repair standards are met (Claims 15-16). A method for recycling or reusing shipping platforms by their original shipper does not result from the combination of Tradeout.com and CHEP.com.

Issue 2

Rejection under 35 U.S.C. 103(a) over CHEP in view of Tradeout.com

Claims 12-13 and 17-18

CHEP manages the movement of shipping platforms only from customers of CHEP. Their coordinating efforts merely track and manage the transfer of shipping platforms within a controlled, closed loop, business environment. Tradeout.com merely lists items for sale to *any* buyer. The combination of Tradeout.com and CHEP does not create a business method whereby specific shipping platforms may be recycled by any one of a plurality of original shippers. The result of this combination is nothing more than an online listing site.

In contrast, the coordinator of claim 12 interacts with a plurality of original shippers and establishes a means whereby shipping platforms that would otherwise have been lost or

discarded are capable of being *recycled and reused* by the *original* shipper. The coordinator sets up a website (Claim 12-a) to enable an “end recipient” to advise the original shipper of the availability the shipper’s platforms that would otherwise have been scrapped. Once repair standards are satisfied (Claims 15-16), the coordinator assists in the return of the repaired shipping platforms to the original shipper and the transfer of money between the shipper and end recipient (Claim 14).

Issue 3

Rejection under 35 U.S.C. 103(a) over Tradeout.com in view of CHEP and further in view of Canadian Patent Council (CPC: cpcpallet.com)

Claims 7-9

CPC maintains a pool of standardized pallets that are *owned* by members of CPC. Much like CHEP and Tradeout.com, this is a closed loop business network. Members add and remove pallets from the pool while CPC tracks the balance of each member’s inventory. In effect, CPC are inventory control managers. If one were to combine the teachings of CPC with the systems of Tradeout.com and CHEP, this would create an internet auction site where only members of CPC could bid on pallets listed by other members. Creating such a system is counterintuitive since it would enable *third parties* to purchase pallets *already owned by another company*. This is inconsistent with the business model of CHEP since CHEP retains ownership of its own pallets, regardless of the location of those pallets. The combined teachings of these references results in a very different business model than that claimed by Appellants.

The arguments set forth hereinabove with respect to the rejection of claim 1 under Tradeout.com in view of CHEP are herein incorporated by reference. Claims 7-9 relate to providing web-based information on standards to be used by the end recipient as guidelines for repairing shipping platforms from a specific shipper so that the original shipper would be willing to retrieve these platforms from the end user through the efforts of a coordinator who

performs the role of a mediator or facilitator. With respect to the further limitations relating to repair standards and the steps of repairing the platforms, the addition of CPC is inconsistent with the combination of Tradeout.com and CHEP and fails to render the subject matter of claims 7-9 obvious.

Issue 4

Rejection under 35 U.S.C. 103(a) over CHEP in view of Tradeout.com and in further view of Canadian Patent Council

Claims 15-16

The arguments set forth above with respect to the combination of Tradeout.com in view of CHEP and in further view of CPC under issue 3 apply here, as well, and are incorporated herein by reference.

Claims 15-16 recite providing web-based information on standards for repairing shipping platforms from a specific shipper so that this shipper would be enabled to recycle its own platforms from an end recipient that might otherwise have been scrapped. With respect to the limitations relating to such repair standards and the instructions for repairing damaged platforms, the combination of CPC with Tradeout.com and CHEP is counterintuitive and fails to render the subject matter of claims 15-16 obvious.

Issue 5

Rejection under 35 U.S.C. 103(a) over Tradeout.com in view of CHEP, as applied to claims 1 and 4, and in further view of SJF Material Handling Inc. (sjf.com)

Claims 5-6

SJF Material Handling, Inc. deals with shipping platforms as one of a broad range of commodity products. Part of their business is to buy and resell items such as shipping platforms for a profit to *any* third party. They are not a “coordinator” as set forth in the

business model of claim 1. Appellants' coordinator provides the service of acting as a conduit between an end recipient or final "handler" and the original shipper of the same pallets which the specific shipper used to initially ship its products. Appellants' coordinator merely facilitates the reconnection of otherwise unlocatable shipping platforms with their original shipper and acts as a conduit for transferring the platforms and the money between the end recipient and the original shipper. The coordinator is clearly not a commodities dealer. However, SJF Material Handling, Inc. is a company built upon its role as a commodities dealer. The addition of SJF Material Handling, Inc. to the teachings of CHEP and Tradeout.com fails to teach or even suggest a business method based upon reconnecting shipping platforms with their original shipper, as claimed in claim 1.

Claims 5 and 6 add the further limitations of having the coordinator act as a mediator or facilitator to assist in the transfer of the shipping platforms from the end recipient to the original shipper and then transferring money between these two parties for the sale of these platforms back to the original shipper. This is a business transaction and the coordinator provides a service to both the original shipper and the end recipient by assisting in the retrieval of shipping platforms by the original shipper, for which the coordinator receives a fee or percentage of the sales price of the shipping platforms. The coordinator is not a commodities dealer and does not purchase the platforms for investment purposes, hoping to make a profit off of the resale of the platforms to a third party. The coordinator of claims 5 and 6 is paid for acting as a conduit to expedite the retrieval of shipping platforms by an original shipper from an end recipient. This is not obvious from the commodities based system set forth by the combination of references which forms the basis for this rejection.

Issue 5

Rejection under 35 U.S.C. 103(a) over Tradeout.com in view of CHEP, as applied to claims 1 and 4, and in further view of SJF Material Handling Inc. (sjf.com)

Claim 14

The discussion of the references and arguments related thereto as set forth above under Issue 5 with respect to claims 5-6 apply here, as well, and are herein incorporated by reference.

Claim 14 adds the limitation to claim 12 of the shipper paying the coordinator a sales amount for the shipping platforms and the coordinator then paying the end recipient a percentage of the sales amount. The balance of the sales amount remains with the coordinator as a fee for arranging the return of the shipping platforms to their original shipper. The coordinator merely acts as a middle-man facilitating the “recycling and reuse” (Claim 12) of platforms by the original shipper. Without the method of claim 12 and its dependent claim 14, shipping platforms that might otherwise have been scrapped are recycled through the aid of a coordinator. The original shipper is more inclined to recycle its original platforms, since it is less costly than having to purchase new shipping platforms made to their particular specifications. This is not obvious over the combination of references applied in the rejection of claim 14.

Issue 6

Rejection under 35 U.S.C. 103(a) over CHEP in view of Tradeout.com, as applied to claim 12 and further in view of SJF Material Handling, Inc.

Claim 14

The description of the references and the arguments set forth above under Issue 5 apply here, as well, and are herein incorporated by reference.

The difference between the rejection of claim 14 under Issue 5 and its rejection herein under Issue 6 is in the use of the primary references as grounds for the rejection of claim 12, instead of claims 1 and 4. However, as stated above, claim 12 applies to recycling platforms that might otherwise have been scrapped or somehow discarded and claim 1 applies to the

retrieval of shipping platforms that might otherwise have ended up with a reseller or commodities dealer. It is respectfully submitted that the role of the coordinator in facilitating the transfer of recyclable shipping platforms and money between the end recipient and an original shipper is even less obvious over the commodities based system created by the combination of references recited in this rejection than the rejection of claim 14 under Issue 5.

CONCLUSION

Appellants respectfully request that the final rejection of claims 1 to 18 under 35 U.S.C. §103 be reversed.

Respectfully submitted:

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(J)
Appendix
Claims

1. A method for retrieving shipping platforms which have been sent by a plurality of original shippers to a plurality of end recipients through a coordinator for reuse, comprising the steps of:
 - a) the coordinator issuing an identification for a plurality of types of shipping platforms;
 - b) the coordinator creating a remotely accessible file describing each of the plurality of types of shipping platforms on a computer site, in which each type of shipping platform is associated with an original shipper;
 - c) the coordinator accepting a listing from an end recipient of at least one shipping platform of one of the types of shipping platforms identified in step (a) for sale at the computer site;
 - d) the coordinator notifying the original shipper associated in step (b) with the type of shipping platform of the listing of the at least one shipping platform listed by the end recipient in step (c).
2. The method of claim 1, further comprising the step, after step (a), of marking the identification and a symbol representing a coordinator onto a plurality of the shipping platforms.
3. The method of claim 2, wherein the step of marking the shipping platforms further comprises marking a computer address for the computer site on the shipping platforms.
4. The method of claim 1, further comprising the step, after step (d), of the coordinator coordinating shipment of the shipping platforms from the end recipient to the shipper.

5. The method of claim 4, further comprising the step of selling the shipping platforms by the end recipient to the coordinator.
6. The method of claim 5, wherein the step of selling the shipping platforms further comprises the steps of:

the shipper paying the coordinator a sales amount for the shipping platforms;

and

the coordinator paying the end recipient a percentage of the sale amount.
7. The method of claim 1, in which the file created in step (b) comprises information on repair standards for the shipping platforms.
8. The method of claim 7, further comprising the step of repairing the shipping platforms in accordance with the repair standards in the file.
9. The method of claim 7, in which the repair standards comprise at least one item selected from a list comprising: a description of repair policy; general guidelines; stringer board repairs; excessive wear and tear and contamination; nails and hardware; and lumber that can be used to repair the shipping platforms.
10. The method of claim 1, wherein the identification issued is based on at least one factor selected from a list comprising: a type of the shipping platform; and a size of the shipping platform.
11. The method of claim 1, wherein the file created in step (b) comprises at least one item selected from a list comprising: the identification issued to the shipping platform; a shipper profile; an image of the shipping platform; repair specifications for the shipping platform; shipping platform specifications; and the annual usage of the shipping platform.

12. A method for recycling and reuse of a shipper's shipping platforms sent from a plurality of end recipients through a coordinator, comprising the steps of:

- a) requesting the coordinator to issue an identification for each of a plurality of types of the shipper's shipping platforms and to create a remotely accessible file describing the plurality of shipping platforms and associating the type of platform with the shipper, on a computer site associated with the coordinator;
- b) marking the identification of the type of platform and a symbol representing the coordinator onto each of a plurality of the shipping platforms;
- c) shipping products on at least some of the plurality of shipping platforms to at least one end recipient;
- d) accepting notification from the coordinator of a listed quantity of shipping platforms of a type associated with the shipper in step (a), which had been listed by an end recipient at the computer site associated with the coordinator; and
- e) receiving at least some of the listed quantity of shipping platforms listed in step (d).

13. The method of claim 12, wherein the step of marking the shipping platforms further comprises marking a computer address for the computer site associated with the coordinator on the shipping platforms.

14. The method of claim 12, wherein the step of receiving the shipping platforms further comprises the steps of:

- the shipper paying the coordinator a sales amount for the shipping platforms;
- and

the coordinator paying the end recipient a percentage of the sale amount.

15. The method of claim 12, in which the file created in step (a) comprises information on repair standards for the shipping platforms.
16. The method of claim 15, in which the repair standards comprise at least one item selected from a list comprising: a description of repair policy; general guidelines; stringer board repairs; excessive wear and tear and contamination; nails and hardware; and lumber that can be used to repair the shipping platforms.
17. The method of claim 12, wherein the identification issued is based on at least one factor selected from a list comprising: the particular type of shipping platform; and the size of the shipping platform.
18. The method of claim 12, wherein the file created in step (a) comprises at least one item selected from a list comprising: the identification assigned to the shipping platform; a shipper profile; an image of the shipping platform; repair specifications for the shipping platforms designated by the shipper; shipping platform specifications; and the annual usage of the shipping platform.

(K)

Evidence Appendix

None

(L)

Related Proceedings Appendix

None

